92-243

Supreme Court, U.S.
FILED
AUG 11 1992
OFFICE OF THE CLERK

No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RONALD L. DIXON AND
DONALD J. NAEGELE,
PETITIONERS,

VERSUS

OGDEN NEWSPAPERS, INC.,
A CORPORATION,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF
WEST VIRGINIA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

WILLIAM R. METZNER
Counsel of Record for
the Petitioners
2212 National Road
Wheeling, WV 26003
(304) 243-1510

154 P

A P P E N D I X

TABLE OF CONTENTS

	Page
Order of West Virginia Supreme Court of Appeals Denying Petition for Rehearing (entered on May 13, 1992) . .	A-1
Order of West Virginia Supreme Court of Appeals Reversing Judgment of Ohio County Circuit Court (entered on February 27, 1992)	A-3
Opinion of West Virginia Supreme Court of Appeals Delivered upon Rendering of its Judgment of Reversal (filed on February 27, 1992) .	A-5
Petition for Rehearing Filed in West Virginia Supreme Court of Appeals by Dixon and Naegele	A-41
Order of Ohio County Circuit Court Disposing of Post-Trial Motions	A-59
Post-Trial Motions of Ogden Newspapers, Inc., in Ohio County Circuit Court	A-63
Judgment of Ohio County Circuit Court on Verdicts in Favor of Dixon and Naegele	A-69

(continued on page ii)

Page

Opinion and Order of Ohio County Circuit Court Denying Ogden's Motion for Summary Judgment in Naegele Case. A-72

Motion to Dismiss of Ogden Newspapers, Inc., in Ohio County Circuit Court, in Naegele Case. A-80

Transcript of George Stefanow's Testimony in 1983 Misdemeanor Trial (in Ohio County Magistrate Court). A-85

Newspaper Article (Front Page) of March 12, 1983 . . . . . A-125

Newspaper Article (Front Page) of March 16, 1983 . . . . . A-136

Newspaper Article (Front Page) of May 3, 1983 . . . . . A-144

Newspaper Article (2d Section, Front Page) of May 3, 1983 . . A-150

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 13th day of May 1992, the following order was made and entered:

Ronald L. Dixon, Plaintiff Below, Appellee

vs.) No. 19425

Ogden Newspapers, Inc., a corporation, Defendant Below, Appellant

AND

Donald J. Naegele, Plaintiff Below, Appellee

vs.

Ogden Newspapers, Inc., a corporation, Defendant Below, Appellant

The Court, having maturely considered the petition for rehearing and reargument filed in the above-captioned case, is of opinion to, and doth hereby deny the prayer of the petitioner and doth order that the final order entered herein be made absolute and cer-

tified as heretofore directed.

A True Copy

Attest: /s/ Ancil G. Ramey
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 27th day of February, 1992, the following order was made and entered:

Ronald L. Dixon, Plaintiff Below, Appellee

vs.) No. 19425

Ogden Newspapers, Inc., a corporation, Defendant Below, Appellant

AND

Donald J. Naegele, Plaintiff Below, Appellee

vs.

Ogden Newspapers, Inc., a corporation, Defendant Below, Appellant

The Court, having maturely considered the transcript of the record and the oral argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is error in the judgment of the Circuit Court of Ohio County, rendered on the 9th day of

March, 1989. It is therefore considered and ordered by the Court that said judgment be, and the same is hereby, set aside, reversed and annulled, and that the appellant, Ogden Newspapers, Inc., a corporation, do recover of and from the appellees, Ronald L. Dixon and Donald J. Naegele, its costs about the prosecution of its appeal in this Court in this behalf expended; all of which is ordered to be certified to the Circuit Court of Ohio County.

The syllabus of points adjudicated, prefixed to the written opinion aforesaid, prepared by Justice Brotherton, was concurred in by Chief Justice McHugh and Justices Workman, Neely and Miller.

A True Copy

Attest: /s/ Ancil G. Ramey
Clerk, Supreme Court of Appeals

IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

September 1991 Term

No. 19425

RONALD L. DIXON,
Plaintiff Below, Appellee,

v.

OGDEN NEWSPAPERS, INC.,
A CORPORATION,
Defendant Below, Appellant

and

DONALD J. NAEGELE,
Plaintiff Below, Appellee,

v.

OGDEN NEWSPAPERS, INC.,
A CORPORATION,
Defendant Below, Appellant

Appeal from the Circuit Court
of Ohio County
Honorable Ronald E. Wilson, Judge
Civil Action No. 83-C-427R

REVERSED

Submitted: September 11, 1991
Filed: February 27, 1992

William R. Metzner
Wheeling, West Virginia
Attorney for the Appellees

Herbert G. Underwood
Matthew J. Mullaney
Clarksburg, West Virginia
Attorney for the Appellant

JUSTICE BORTHERTON delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "'[A] public official . . . can sustain an action for libel only if he can prove that: (1) the alleged libelous statements were false or misleading; (2) the statements tended to defame the plaintiff and reflect shame, contumely, and disgrace upon him; (3) the statements were published with knowledge at the time of publication that they were false or misleading or were published with a reckless and willful disregard of truth; and, (4) the

publisher intended to injure the plaintiff through the knowing or reckless publication of the alleged libelous material.' Syllabus Point 1, in part, Sprouse v. Clay Communication, Inc., 158 W.Va. 427, 211 S.E.2d 674, 95 A.L.R.3d 622, cert. denied, 423 U.S. 882, 96 S.Ct. 145, 46 L.Ed.2d 107 (1975)." Syllabus point 4, Long v. Egnor, 176 W.Va. 628, 346 S.E.2d 778 (1986).

2. "Under New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1969), whenever there is a First Amendment defense to actions under state law, the state court is required to be a judge of both the facts and the law . . . ." Syllabus point 2, in part, Mauck v. City of Martinsburg, 167 W.Va. 332, 280 S.E.2d 216 (1991).

3. "A court must decide initially whether as a matter of law the challenged

statements in a defamation action are capable of a defamatory meaning." Syllabus point 6, Long v. Egnor, 176 W.Va. 628, 346 S.E.2d 778 (1986).

4. In order to sustain an action for libel, a public official must present clear and convincing evidence that the media defendant acted with actual malice. Actual malice must be proven with convincing clarity.

5. Evidence that a media defendant intentionally "avoided" the truth in its investigatory techniques or omitted facts in order to distort the truth may support a finding of actual malice necessary to sustain an action for libel.

Brotherton, Justice:

[Errors are indicated or corrected by bracketed comments of counsel for Dixon and Naegele.]

The plaintiffs, Ronald L. Dixon and

Donald J. Naegele, brought separate libel actions in the Circuit Court of Ohio County, West Virginia, against Ogden Newspapers, Inc., publisher of The Intelligencer, a newspaper with a circulation of approximately 24,000 in the northern panhandle of West Virginia. The two cases were consolidated for purposes of discovery and trial.

The defendant newspaper initially moved for dismissal in accordance with Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. Thereafter, the defendant filed a memorandum in support of a summary judgment motion, arguing that the publication of the newspaper articles in question was protected by the common law reporters privilege as a fair and accurate report of an official proceeding. In an opinion and order dated February 28, 1984, the circuit court denied the

defendant's motion and stated that whether the newspaper articles were actually a fair and accurate report of the magistrate court proceedings, and were therefore entitled to the reporter's privilege, was a triable issue of fact precluding summary judgment.

The case eventually proceeded to trial. The court denied defense motions for a directed verdict at the conclusion of the plaintiff's evidence and after all evidence had been presented. On October 31, 1988, a jury awarded each plaintiff $250,000 in compensatory damages and $25,000 in punitive damages. On March 9, 1989, the trial court granted the defendant's motion for judgment notwithstanding the verdict and eliminated the punitive damage awards. Ogden Newspapers, Inc., now appeals to this Court from both the jury verdict and the judg-

ment entered by the court below on November 10, 1988. The newspaper argues that the plaintiffs failed, as a matter of law, to adequately demonstrate either the falsity of the story or that the story was published with the actual malice required by New York Times Co. V. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), and its progeny. We agree that the constitutional evidentiary requirement was not met in this case, and for the reasons set forth below, we reverse the judgment of the Circuit Court of Ohio County.

The plaintiffs, Dixon and Naegele, were policemen employed by the City of Wheeling when a trial took place in the Magistrate Court of Ohio County in Wheeling, West Virginia, on May 2, 1983. During the course of this trial, the defendant, local businessman George Stefanow,

identified both plaintiffs as police officers with whom he discussed a police vice raid which transpired on July 15, 1982.

Warren Bays, a veteran reported employed by The Intelligencer, was assigned to cover Stefanow's trial, which arose out of Wheeling rookie police officer Robert Heldreth's allegation that Stefanow threatened him over the telephone on July 17, 1982. Stefanow admittedly called Heldreth after he learned that in the course of the aforementioned vice raid, Heldreth used Stefanow's name to gain access to the "Green Door," a suspected house of prostitution located in Wheeling.

At this point, it is important to note that George Stefanow is the brother-in-law of one of the plaintiffs in this case, Donald J. Naegele. He is also an admitted antagonist and outspoken critic

of the leadership of the Wheeling Police Department. The plaintiffs describe Stefanow as a man who was conducting his own war to cleanse the higher ranks of the police department of alleged corruption. Stefanow states that when he learned that his name had been used by Heldreth in the raid, he suspected that Wheeling's Chief of Detectives Joseph S. Davis, Jr., Chief of Police Edward Weith, Jr., and members of Wheeling's vice squad had instructed Heldreth to use his name as a retaliatory measure to foster animosity toward Stefanow among his prospective constituents.[1] At that time of the in-

---

[1]Stefanow testified that the day after he learned his name had been used, he approached Chief Weith, who was joined by Detective Davis, and asked them why they would use his name: "Davis informed me we use any ploy we can, anybody's name or any ploy we can to get into a house of prostitution. I said, 'In other words, you condone using my name?' and he said, 'We will use any name,' and I said, 'What if I used your name if I go to rob a bank? Would you like that?'"

cidents which give rise to this action, Stefanow was a condidate for election to the Wheeling City Council.

According to the plaintiffs, Stefanow contacted each of them by telephone several days after the raid. Dixon states that, in response to Stefanow's questioning, he told Stefanow that the name of the police officer who had made the raid on the Green Door was Robert Heldreth. According to Dixon, this information was available to the public, and he gave it out over the phone in his official capacity as a sergeant. Later, in response to a separate phone inquiry, Officer Naegele told Stefanow that he had never heard of Officer Robert Heldreth.

Two days after the July 15, 1982, vice raid, Stefanow contacted Heldreth by telephone. In testimony given at trial on May 2, 1983, Stefanow stated that he

called Heldreth because he wanted to know why Heldreth used his name to gain entrance to the Green Door. Stefanow said he wanted to know who told Heldreth to use his name, "[b]ecause I have lawsuits against [Detective Steve] Habursky and the police force, vice squad people." As a result of the call, Stefanow was subsequently charged with and tried for the alleged offense of telephone harassment.

Following Stefanow's trial on May 2, 1983, Warren Bays' report of the proceedings appeared in two separate news stories in the May 3, 1983, edition of The Intelligencer, which is a morning newspaper. One article appeared on page one with the headline "Stefanow: Policeman Supplied Information," and a lead paragraph which stated that "Wheeling tavern owner George Stefanow testified Monday that his broth-

er-in-law, Patrolman Donald Naegele, and Sgt. Ronald Dixon of the Wheeling Bureau of Police supplied Stefanow information about a vice raid last summer." A second, lengthier article, entitled "Stefanow Found Innocent in Phone Threat" was on page eleven, which was the first page of the second or city section. These two news stories formed the basis for the libel actions filed by police officers Dixon and Naegele, who alleged that the newspaper was guilty of libel by innuendo which damaged their reputations.[2]

The plaintiffs concede that both of the articles written by Bays were substantially accurate and true "as far as

---

[2] See Note, The Art of Insinuation: Defamation by Implication, 58 Fordham L. Rev. 677, 679 n.14 (1990). The author states that courts "use the terms implication, innuendo, and impression interchangeably." However, the commonly understood meaning of innuendo is "the implication arising from a literal statement." Id.

they went." However, they maintain that material facts were omitted and, as a result, their reputations were damaged by the innuendo and the inferences that readers may draw from the two articles. The plaintiffs contend that the articles imply that they each gave Stefanow information concerning the July 15, 1982, police vice raid on the Green Door in advance of the raid, and thus interfered with the raid in some undisclosed manner. The plaintiffs further allege that Warren Bays intentionally designed the story so as to permit these inferences, in furtherance of a conspiracy between Bays and police Lt. Joseph Davis to damage the reputations of Officers Dixon and Naegele.

Elaborating on their argument, the plaintiffs maintain that Stefanow's trial testimony was quite clear with respect to both the mundane nature of his discussions

-with Dixon and Naegele and to the post-raid time frame, but that Bays nevertheless "transformed" Stefanow's truthful and nondefamatory testimony into false and defamatory news accounts of that testimony. The plaintiffs argue that they successfully proved at trial that Bays made this so-called transformation knowingly, intentionally, and maliciously, as a favor to his long-time friends, Lt. Davis and Chief Weith, who were political adversaries of Stefanow and viewed Dixon and Naegele as two of Stefanow's strongest supporters within the police department.

In its defense, the newspaper offers that the contents of the two stories were true and accurate. Bays testified that he did not have access to a transcript of the trial proceedings, but he constructed what he believed to be a fair summary

of what occurred at Stefanow's trial from his notes. The newspaper submits that when the context [sic] of an article is substantially true, innuendo alone is insufficient to support a public official's claim of libel. Further, because First Amendment defenses are involved, a trial court must make an independent determination of whether an article is capable of a defamatory connotation and whether the evidence presented satisfies the constitutional standards by proving actual malice with "convincing clarity."

Both parties to this case stipulated to the plaintiffs' designation as "public officials."[3] In syllabus point 4 of

---

[3]"Police and other law enforcement personnel are almost always classified as public officials. It is hard to conceive of speech more vital to a free and democratic society than speech concerning public officials, for the police are the embodiment of the government's maintenance

Long v. Egnor, 176 W.Va. 628, 346 S.E. 2d 778 (1986), this Court stated that:

> "[A] public official . . . can sustain an action for libel only if he can prove that: (1) the alleged libelous statements were false or misleading; (2) the statements tended to defame and plaintiff and reflect shame, contumely, and disgrace upon him; (3) the statements were published with knowledge at the time of publication that they were false or misleading or were published with a reckless and willful disregard of truth; and, (4) the publisher intended to injure the plaintiff through the knowing or reckless publication of the alleged libelous material." Syllabus Point 1, in part, Sprouse v. Clay Communication, Inc., 158 W.Va. 427, 211 S.E.2d 674, 95 A.L.R.3d 622, cert. denied, 423 U.S. 882, 96 S.Ct. 145, 46 L.Ed.2d 107 (1975).

---

of social order." R. Smolla, Law of Defamation § 2.26[1] (1991); see Starr v. Beckley Newspapers Corp., 157 W.Va. 447, 201 S.E.2d 911 (1974), in which this Court held that "[a] municipal police sergeant is a 'public official' within the contemplation of the New York Times Co. v. Sullivan case and must, therefore, allege and prove actual malice in order to recover in a libel action against a newspaper." Id. at syl. pt. 1.

Before we examine the evidence which was presented in this case, we will briefly address the appropriate standard of review. In Sprouse v. Clay Communication, Inc., 158 W.Va. 427, 211 S.E.2d 674, 681 (1975), this Court stated that "[u]nder the mandate of New York Times v. Sullivan, supra, it is incumbent upon an appellate court in determining the validity of a libel judgment both to consider the law and to make an independent evaluation of the evidence to insure First Amendment protection to publishers." "[W]here First Amendment rights are implicated, courts have applied a stricter standard in judging the sufficiency of a complaint." Long v. Egnor, 176 W.Va. 628, 346 S.E.2d 778, 782 (1986). In syllabus point 2 of Mauck v. City of Martinsburg, 167 W.Va. 332, 280 S.E.2d 216 (1981), we stated that as a result of New York Times

v. Sullivan, "whenever there is a First Amendment defense to actions under state law, the state court is required to be a judge of both the facts and the law. . . ."

The standard of review that an appellate court must apply to a libel case was refined by the United States Supreme Court in Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 511, 104 S.Ct. 1949, 1965, 80 L.Ed.2d 502, 523, (1984), wherein the high Court explained:

> The question whether the evidence in the record in a defamation case is of the convincing clarity required to strip the utterance of First Amendment protection is not merely a question for the trier of fact. Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any jdugment that is not supported by clear and convincing proof of "actual malice."

"A court must decide initially whether as a matter of law the challenged statements in a defamation action are capable of a defamatory meaning." Syllabus point 6, Long v. Egnor, 176 W.Va. 628, 346 S.E.2d 778 (1986).

In the case now before us, the trial court denied the newspaper's motion for summary judgment on February 28, 1984, stating that the facts did not warrant summary judgment because the fairness and accuracy of the newspaper articles were issues to be determined by a jury. Therefore, we must determine first whether Bays' articles were capable of a defamatory meaning, and, if so, whether the judgment entered for the plaintiffs was supported by clear and convincing proof of actual malice.

The appellant argues that the articles written by Bays, together with any innuendo that could reasonably flow from

their omission of the fact that the vice raid information was not communicated to George Stefanow until after the raid, are not defamatory as a matter of law and the trial court erred in failing to make this preliminary finding. We agree.

The plaintiffs' evidence of actual malice consisted primarily of alleged conspiratorial ties between Intelligencer reporter Warren Bays and the Wheeling Police Department. Bays and Chief of Detectives Joseph Davis were admittedly personal friends. Bernard "Sonny" Watson, who was an employee of George Stefanow, testified that when Bays and Davis were leaving the courtroom after Stefanow's trial, Davis said something to the effect of "get those m-f-'s" and that Bays then nodded and winked [grinned] in response.

The plaintiffs also cited Bays' two

May 3, 1983 newspaper articles as further evidence in support of their conspiracy theory. They argue that both articles contained exaggerated, distorted, and misleading renditions of the substance of Stefanow's testimony. They maintain further that the published accounts were enhanced by suggestive comments portraying the plaintiffs as "informants" and "sources" who "leaked" sensitive police information in an attempt to frustrate a vice raid and who had probably "leaked" sensitive police information to outsiders to frustrate other covert police operations on other occasions.

More specifically, the plaintiffs state that a comparison of Stefanow's trial transcript with the inside news article written by Bays "reveals . . . that the two quotations were fabricated. Each fabricated quotation was instrumental in misleading readers . . . ." The quo-

tations the plaintiffs refer to are the use of the word "sources" to describe Dixon and Naegele and a statement attributed to Stefanow that he "had been alerted" about Heldreth. The plaintiffs claim that the word "sources" implied that Stefanow had an ongoing relationship with Dixon and Naegele. Further, they argue that by stating that Stefanow "had been alerted" about Heldreth, the article "implies that the identity of Heldreth as an undercover officer had been imparted by Dixon and Naegele to Stefanow in advance of the raid."

The plaintiffs also object to a sentence in the article in which Bays wrote that "In answer to a question . . . Stefanow said he'sometimes asks' the two police officers questions 'and they give me information.'" A review of the transcript reveals that in response to the

prosecutor's question about whether he discussed "other events that occur in your neighborhood with these police officers?", Stefanow responded, "Yes, because that is my neighborhood." Shortly thereafter, Stefanow was again asked, "You ask them and do they tell you what is going on?" He replied, "Sometimes."

The portion of the newspaper article which contains the specific quotations objected to by the plaintiffs states as follows:

> Under questioning by Ohio County Assistant Prosecutor A. Dana Kahle, Stefanow identified his informants on the police force as "my brother-in-law Don Naegele and Sgt. (Ronald) Dixon."
>
> Stefanow had at first refused to identify his "sources" on the police force "because it might incriminate the officers," but after consulting with his attorney, William Metzner, he agreed to testify about information given him concerning the vice raid in Center Wheeling.
>
> "I discussed it with Don Naegele and Sgt. Dixon," Stefanow

> said. In answer to a question from Kahle, Stefanow said he "sometimes asks" the two police officers questions "and they give me information."
>
> However, there was no testimony as to exactly what was discussed between Stefanow and the police officers. Stefanow said it was common knowledge that a "rookie" is used on vice raids and that he had "obtained information" about Heldreth before he had ever met the new policeman.
>
> "Police officers told me he had only been on the force for two days," Stefanow told the court. He further said "I had been alerted" about Heldreth. (Emphasis added.)

The transcript of Stefanow's testimony at his May 2, 1982, trial confirms that Stefanow never actually stated that he "had been alerted" about Officer Heldreth. However, Stefanow did state that when he tried to obtain information about Heldreth, he learned that Heldreth was a rookie who had only been on the force two days. Stefanow did not testify that he got information only from the

plaintiffs. In fact, in the next paragraph of the article quoted above, Bays reported that "He [Stefanow] identified Lucille Riggi, who has been cited by police for operating an alleged house of prostitution, as one person having given him information on the new officer and the vice raid." Most importantly, nothing in either of the two news articles suggested that the vice raid was compromised in any manner because of the information Stefanow received from the plaintiffs.

Although it is evident from the transcript that Stefanow never used the words "sources" or "informants" to describe the plaintiffs, the article accurately reported Stefanow's reluctance to respond when questioned about who "informed" him of the raid. When asked, "Would you tell us the names of those police officers that gave you information?", Stefanow replied, "I will not be-

cause it would tend to incriminate them." When considered within this context, Bays' use of the words "sources" or "informants"[4] was not inappropriate, and it certainly could not be characterized as a "knowing falsehood."[5]

---

[4]The defendant refutes the plaintiffs' suggestion that the use of the term "informant" is in a context leading an individual "to believe that he supplied confidential police information to Stefanow to which Stefanow had no right." The plaintiffs [defendant] point out that Stefanow was responding to the assistant prosecuting attorney's request that he name the police officers "that informed you of the raid." The plaintiffs [defendant] offer the following definitions to support their argument:

> An INFORMANT is one who gives information of whatever sort; an INFORMER is one who informs against another by way of accusation or complaint. INFORMER is often, INFORMANT never, a term of opprobrium.

Webster's New International Dictionary, Second Edition, Unabridged (1950 Ed.).

[5]In Masson v. New Yorker Magazine, Inc., 501 U.S. ___, 111 S.Ct. 2419, 115 L.Ed.2d 447, 472 (1991), the United States

With regard to the precise time of the vice raid information disclosure, Stefanow testified that Dixon and Naegele gave him information after the raid. In denying Ogden Newspapers' motion for summary judgment on February 28, 1984, Circuit Court Judge Ronald Wilson wrote than [that], "[t]he testimony was quite clear that the information given to Mr. Stefanow was given sometime after the Wheeling police raid on a suspected house of prostitution. That acute information is nowhere to be found in either article." Judge Wilson concluded by asking, "[w]ith-

---

Supreme Court addressed the issue of whether actual malice is demonstrated through the publication of a quotation with the full knowledge that the quotation does not contain the exact words used by a public figure. The Court rejected this strict standard, with Justice Kennedy writing that, "[i]f an author alters a speaker's words but effects no material change in meaning, including any meaning conveyed by the manner or fact of expression, the speaker suffers no injury to reputation that is compensable as a defamation."

out that information can it be found that as a matter of law the article accurately reported the judicial proceeding?"

On this point, reporter Warren Bays testified that the whole day in court was confusing. When he was questioned about exactly when Dixon and Naegele gave Stefanow information about the raid, Bays stated, "I think it was unclear to an awful lot of people."[6] Bays also testified that it was "absurd" to charge that he purposely omitted the time of the information transfer. He pointed out that his articles did not state that the information was given out either prior to or after the raid.

---

[6]We note that in a separate May 3, 1983, article describing the events at Stefanow's trial which appeared in another Wheeling newspaper, The News-Register, under the headline "'Keystone Kops' Delay Testimony," staff writer Andy Wessels did not include the precise time that Naegele and Dixon offered Stefanow

We believe it is necessary to emphasize that the implication that the plaintiffs were engaged in wrongdoing was not raised first by Bays' omission of the time frame information in his articles, but by Stefanow's testimony, in which he related his fear of "incriminating" the officers. This exchange between Stefanow and the prosecution was reported with substantial accuracy in Bays' article. Bays also wrote that, "[t]here was no testimony as to exactly what was discussed between

---

information. In the fourth paragraph of this article, Wessels wrote that Police Chief Weith "promised to investigate testimony by the defendant, George Stefanow, which revealed that Patrolman Donald Naegele and Sgt. Ronald L. Dixon offered him information about a vice raid on an alleged house of prostitution at 2126 1/2 Main St. on July 15, 1982." [This article was never introduced into evidence. Moreover, it was copied from The Intelligencer, a morning newspaper, by the Wheeling News-Register, an evening newspaper. Both newspapers are owned by Ogden Newspapers, Inc., operate from the same building, and share news reported in each newspaper. Bays was the only member of the news media who covered Stefanow's trial.]

Stefanow and the police officers." It is important to note as well that in his article, Bays included Police Chief Weith's comment that Stefanow's testimony in and of itself was not indicative of wrongdoing. Weith stated that he would "study the testimony given" to determine if "official police business had been leaked out." This is the sole reference to a "leak" of any sort in either of Bays' May 3, 1983, articles, and it is consistent with two earlier articles written by Bays which were published in The Intelligencer on March 12, 1983, and March 16, 1983, with headlines which stated "Rift in Police Ranks Appears to Widen" and "Weith Faults 'Outside Influence.'"

In the March 12, 1983, article, Bays reported how divisions within the police department were growing wider after the March 11, 1983, assault hearings in which one of the plaintiffs herein, Ronald Dixon,

was a key figure. Bays wrote that, "[t]estimony also brought out that Dixon had once been in charge of the detective division which is now headed by Lt. Davis. Dixon said he lost the job as chief detective 'the day Ed Weith became chief.'"

However, neither Dixon nor Naegele were mentioned in the March 16, 1983, Intelligencer article in which Bays reported Chief Weith's charges that "outside influences" were tampering with certain police officers and that "'only about six or so' officers are 'disgruntled enough' to cause dissension in the ranks." It was apparently no secret that George Stefanow was the "outside influence" Weith referred to, because his allegations of police corruption were well-known. The March 16, 1983 article also reported Weith's concern that some police department information was being "leaked" to outsiders: "We've sent new men out on

undercover work, and on assigned raids, and their identity has been known by the time they left the building . . . We can't keep the identity of a new officer secret. Their description is given to certain people . . . ."

We reiterate that these two articles written by Bays appeared in The Intelligencer approximately six weeks prior to the magistrate court trial at which George Stefanow was asked to identify the police officers who provided him with information about a raid. He responded to this inquiry by stating, "I will not because it would tend to incriminate them." The subsequent May 3, 1983, articles did not describe the plaintiffs as police officers who were responsible for any leaks of information in advance of police activities, not [nor] did the articles suggest that the police officers had attempted to "frustrate" the vice raid by

providing Stefanow with information. In fact, Chief Weith's own statement, which was quoted twice by Bays, made it quite clear that neither officer had been accused of any type of wrongdoing in connection with a disclosure of information to Stefanow.

Our analysis in this case is complicated to a degree by the fact that the newspaper articles at issue hurl no outright accusations of wrongdoing by the plaintiffs, nor do they express any opinion as to the plaintiffs' conduct. Instead, it is from the omission of one fact that the plaintiffs derive their allegation that the newspaper intended to defame them through the inferences readers may draw from the statement that the plaintiffs supplied Stefanow with information. However, Stefanow's testimony was clear on this point: the plaintiffs did provide him with information when he

requested it on at least one occasion. Whether the plaintiffs were wrong to do so, and whether there were other disclosures, were matters left to further investigation, and the articles make this clear. The newspaper did not draw any conclusions about what the plaintiffs did or did not do.

Evidence that a media defendant intentionally "avoided" the truth in its investigatory techniques or omitted facts in order to distort the truth may support a finding of actual malice necessary to sustain an action for libel. In this instance, this Court is convinced that the judgment for the plaintiffs must be reversed unless the newspaper intentionally omitted the time of the vice raid information disclosure in order to leave readers with the impression that the plaintiffs wrongfully supplied Stefanow with information. Evidence of

such behavior would support the conclusion that the newspaper published the article with knowledge that it was "false or misleading" or with a reckless and willful disregard of the truth. However, this is unquestionably a difficult thing to prove with "convincing clarity," and we do not believe it was done by the conspiracy theory advanced by the plaintiffs in this case. The newspaper persuasively points out that if there is a "sting" in its articles, it is found not in the fact that Stefanow received information about the vice raid either before or after the raid, but in the fact that Stefanow received any information at all from these police officers at any time. Such an assertion is bolstered by Stefanow's reluctance at his trial to reveal the names of the police officers for fear of "incriminating" them, as well

as by the newspaper's report nearly two months earlier of Chief Weith's concern that police department information was being leaked to outsiders.

Thus, after reviewing both the transcripts of the proceedings below and the contents of the two newspaper articles written by Warren Bays, we conclude that the plaintiffs did not present the clear and convincing evidence of actual malice that public officials are required to show in order to sustain an action for libel. Actual malice must be proven with convincing clarity, and the plaintiffs in this case simply did not offer sufficient evidence to meet this standard.

For the foregoing reasons, the judgment of the Circuit Court of Ohio County is reversed.

Reversed.

NO. 19425

IN THE
SUPREME COURT OF APPEALS OF
WEST VIRGINIA

[caption omitted]

APPELLEES' PETITION FOR REHEARING

Now come the appellees, Ronald L. Dixon and Donald J. Naegele, by counsel, and respectfully petition this Court for rehearing and reconsideration of the appeal granted herein on December 5, 1989, and decided adversely to Dixon and Naegele by written opinion of this Court filed on February 27, 1992. In support of this Petition, Dixon and Naegele, by counsel, say that, in their opinion, this Court has misapprehended and overlooked points of law and points of fact in reversing the judgment of the Circuit Court of Ohio County which awarded to each appellee,

upon jury verdicts in their favor, compensatory damages of $250,000.00. The points which the appellees believe have been misapprehended and overlooked are treated below.

I.

ARTICLES CAPABLE OF DEFAMATORY INNUENDO

This Court, after reiterating the broad statement in Long v. Egnor, 176 W.Va. 628, 346 S.E.2d 778 (1986), that first-amendment considerations require a court to "decide initially whether as a matter of law the challenged statements in a defamation action are capable of a defamatory meaning," (a) incorrectly concluded that the trial judge in the case at bar failed to make any such decision and (b) incorrectly concluded that the articles and any innuendo reasonably flowing from them were not defamatory as a matter of law.

A. Trial Court Did Rule on Capability of Defamatory Innuendo

As recited in the appellees' brief on appeal, The Ogden Newspapers, Inc., moved to dismiss the complaints of Dixon and Naegele on the grounds, among others, that Ogden "did not publish any libelous or defamatory matter pertaining to . . ." Dixon and Naegele, and that the "language" of the published articles "does not constitute . . . a libel nor is it . . . defamatory." (R. 20-21, 25-26.)

After quoting the statement (R. 97) in each of Ogden's supporting memoranda that "[h]ad the articles . . . asserted or implied wrongdoing or failed to describe the context of the statements or identify the declarant, plaintiff might be heard to complain of defamation," the trial court, treating the dismissal motions as motions for summary judgment, not only stated the conspicuous omission of

the post-raid time from the reported substance of Stefanow's 1983 trial testimony created jury questions as to the fairness and accuracy of the newspaper's report of Stefanow's trial and that "[t]he facts in this case do not warrant the application of summary judgment," but also denied the motions outright. The rejected motions included the assertion that the published material was not defamatory, so it appears rather obvious that the trial court considered reporter Warren Bays' omission of the post-raid time frame as being capable of misleading readers to a defamatory conclusion.

B. This Court Wrongly Decided Capability Issue

This Court, in its opinion, declared that it "must determine first whether Bays' articles were capable of a defamatory meaning . . ." because the trial court had not done so. After noting that

Ogden argued that the articles written by Bays, together with any innuendo reasonably flowing from the omission by Bays of the post-raid time frame, "are not defamatory as a matter of law and the trial court erred in failing to make this preliminary finding," this Court tritely concluded, "We agree." This Court then quickly changed the topic to the issue of actual malice, which it pursued relentlessly, but unpersuasively, for the remainder of its written opinion.

While there is some debate about whether the element of falsity must be established by clear and convincing evidence or by a preponderance of the evidence, Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 109 S.Ct. 2678, 2683 n.2 (1989), no question exists about the standard of proof required to establish published material as defamatory. A plaintiff must prove that the

material is defamatory by a preponderance of the evidence. It is only where the type of speech cannot reasonably be interpreted as stating or implying actual defamatory facts about an individual does the first amendment come into play to bar a recovery. Milkovich v. Lorain Journal Co., 110 S.Ct. 2695, 2704 (1990); cf. Long v. Egnor, supra, 346 S.E.2d at 784. In Milkovich, the United States Supreme Court declined to recognize "a wholesale defamation exemption for anything that might be labeled 'opinion.'" Milkovich, supra at 2705. Instead, the United States Supreme Court held that where a statement "on a matter of public concern reasonably implies false and defamatory facts regarding public figures or officials . . . ," the statement is actionable regardless of whether the statement is one of opinion or one of fact. Id. at 2706-07. (Emphasis added.)

In Masson v. New Yorker Magazine, Inc., 111 S.Ct. 2419 (1991), the United States Supreme Court reversed a judgment of the United States Court of Appeals for the Ninth Circuit, which had affirmed a federal district court's summary judgment in favor of a news writer. There, the United States Supreme Court considered six published topics from interviews in which the public-figure plaintiff had been misquoted, and concluded that five of the six passages created issues of fact for the jury as to falsity and actual malice. One of the quoted passages (considered by the Supreme Court in its opinion under the headings "He Had the Wrong Man") concerned the omission of part of what the plaintiff had said, but otherwise substantially followed the taped recording of the plaintiff's interview. The Supreme Court concluded that the difference in meaning

created by the omission was "material" and that "a jury might find it defamatory." With respect to the fabricated and altered quotations under review, the Supreme Court observed that "many of the quotations at issue might reasonably be construed to state or imply factual assertions that are both false and defamatory . . . ." (Emphasis added.)

Counsel for Dixon and Naegele submits that the West Virginia Supreme Court of Appeals overlooked and/or misapprehended the ramifications of Milkovich v. Lorain Journal Co., supra, and Masson v. New Yorker Magazine, Inc., supra. An omission from, or an alteration of, the substance of a person's reported statements, particularly when the writer uses quotations, may often result in stated or implied false, defamatory assertions. In the instant case, the dispositive question is whether or not a reasonable fact finder could conclude that the omission of the post-raid tim

frame from Bays' articles and the fabricated quotations implied a false, defamatory meaning. Not only could a reasonable fact finder (a jury) make such a conclusion, but the jury did so in this case.

II.

APPELLATE REVIEW MUST EXCLUDE TESTIMONY OBVIOUSLY DISBELIEVED BY JURY

A. Actual Malice and Credibility

Counsel for Dixon and Naegele submits that Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 109 S.Ct. 2678 (1989), requires that an appellate court review only the evidence of actual malice which remains after eliminating the testimony of witnesses which the jury, as fact finder, obviously disbelieved, unless the jury was clearly wrong in its credibility determinations.

This Court did not follow the mandated approach outlined in Harte-Hanks,

but instead relied on Bays' testimony that he was confused and transcribed his notes to the best of his ability (although the jury obviously rejected the truth of his sworn drivel) to conclude that the evidence of actual malice was not clear and convincing. Reliance upon Bays' testimony to blur the clarity and weaken the persuasiveness of the evidence of actual malice on the part of Bays is clearly improper under Harte-Hanks and finds no support or justification in the first amendment.

What this Court failed to consider is that the jury might have had good reasons not to believe Bays. Bays' demeanor on the witness chair was atrocious. Whenever Bays answered questions with "Absolutely not," "Certainly not," "That's absurd," or the like, probably everyone in the courtroom, including his own attorney, considered the responses to mean yes.

This was so because Bays frequently smirked, often giggled nervously, and always fidgeted when answering questions that way. Of course, these gestures and mannerisms do not, and cannot, appear in the transcript of Bays' testimony, so that is why Harte-Hanks requires an appellate court to give "special deference" to a jury's obvious credibility determinations.

B. Court's Use of Unadmitted News Article to Lend Credence to Bays' Testimony

What this Court did in footnote 6 to its opinion would, counsel submits, merit a severe reprimand if done by an attorney in a petition or brief filed with this Court. This Court cited a separate article of May 3, 1983, which was published in the Wheeling News-Register, written by "staff writer" Andy Wessels and bearing the headline "'Keystone Kops' Delay Testimony", to lend

credence to Bays' false testimony that the time frame of Stefanow's inquiries of Dixon and Naegele "was unclear to an awful lot of people." Footnote 6, for a variety of sound reasons, is worthless for the purpose intended.

First, the article in the Wheeling News-Register never had been offered into evidence at the trial of this case and, consequently, is not part of the evidence adduced at trial or of the record to be reviewed by this Court. In the second place, Andy Wessels simply copied and paraphrased for the Wheeling News-Register, which is an evening newspaper also owned by Ogden and operating in the same building as The Intelligencer (Transcript, p. 236), a morning newspaper, the articles which had earlier appeared in The Intelligencer. (The fact that Wessels was a "staff writer" and not a reporter constituted a clue of sorts that

Wessels was not present at Stefanow's 1983 misdemeanor trial.) In the third place, Bays was the only representative of any news media who attended Stefanow's 1983 misdemeanor trial. Finally, the time frame to which Stefanow referred repeatedly in his 1983 testimony was crystal clear, unmistakable, and understood throughout the small courtroom (in which no more than twelve observers were present, all of whom were seated).

The News-Register article which was cited by this Court in footnote 6 was proffered by counsel for Dixon and Naegele to counsel for Ogden and to the Court as an exhibit which Dixon and Naegele might possibly offer into evidence. The purpose contemplated by counsel for introducing the article—to show that Bays' news articles of May 3, 1983, had been copied and disseminated by other news media—was instead established by the tes-

timony of witnesses.

III.

ACTUAL MALICE PROVED BY CUMULATION OF FACTS AND CIRCUMSTANCES

In this Court's written opinion of February 27, 1992, this Court methodically attempts to explain away, one by one, each and every fact and circumstance which tend to establish that Bays intentionally omitted the post-raid time frame of Stefanow's brief discussions with Dixon and Naegele. That is not difficult to do if one puts his mind to it. However, Dixon and Naegele's case is built upon a cumulation of facts and circumstances, which, when considered altogether, cannot easily be explained away. For every fact and circumstance (pointing to an intentional misleading of readers) to exist at the same time [by chance] is extremely unlikely.

It is not, as this Court represented,

"the omission of one fact" from which Dixon and Naegele "derive their allegation that the newspaper intended to defame them . . . ." (Opinion, p. 17.) While the omission from the news articles of the clearly expressed post-raid time frame certainly was at the heart of the libel, Bays' state of mind also is reflected by the several fabricated quotations which are mentioned in the appellees' brief and which are considered one at a time in this Court's opinion, and by Bays' "grin" and "nod" in response to Lt. Joseph Davis' angry demand to Bays to "get" Dixon and Naegele when Stefanow was acquitted in his 1983 trial. (As this Court well knows, Sonny Watson did not testify that he witnessed Bays "wink" at Davis.) Furthermore, Bays' failure to seek clarification of Stefanow's supposedly "confusing" testimony, Bays' solicitation of suggestive comments from

the chief of police, Edward Weith, Jr., while Bays supposedly was consciously aware of his confusion, Bays' failure to seek comments from Dixon and Naegele, Bays' close friendships with Lt. Davis and Chief Weith, Bays' awareness of their ongoing political struggle with Stefanow, and Bays' keen awareness of his March 16, 1983, article in which he wrote of Chief Weith's supposed concern about the "leaking" of police business, all bear importantly upon Bays' state of mind at the time he wrote and caused the articles of May 3,1983, to be published in The Intelligencer.

As stated in Harte-Hanks, supra, 109 S.Ct. at 2686, "a plaintiff is entitled to prove a defendant's state of mind through circumstantial evidence . . . ." While it is difficult to prove actual malice in a clear and convincing fashion, Dixon and Naegele are not required to

prove actual malice beyond a reasonable doubt or to an absolute certainty. See Harte-Hanks, supra; Milkovich, supra; Masson, supra. Simply because portions of Bays' news articles of May 3, 1983, contained substantially truthful accounts of Stefanow's 1983 misdemeanor trial does not mean that Bays did not purposely mislead readers. As noted in Afro-American Publishing Co. v. Jaffe, 366 F.2d 649, 655 (D.C. Cir. 1966), "the defamer may be [all] the more successful when he baits the hook with truth."

WHEREFORE, the appellees, Dixon and Naegele, respectfully pray that their Petition for Rehearing be granted by this Honorable Court, and that this Honorable Court take such additional action with respect to this Petition and the matters raised herein as it deems appropriate under the circumstances of

this case.

Respectfully submitted,

/s/ William R. Metzner
Attorney for Appellees

IN THE CIRCUIT COURT OF
OHIO COUNTY, WEST VIRGINIA

RONALD L. DIXON,

Plaintiff

vs. CIVIL ACTION NO. 83-C-427-W

OGDEN NEWSPAPERS, INC.,
a corporation,

Defendant

and

DONALD J. NAEGELE,

Plaintiff

vs. CIVIL ACTION NO. 83-C-425-W

OGDEN NEWSPAPERS, INC.,
a corporation,

Defendant

O R D E R

This action came on to be heard upon the defendant's Motions in the Alternative for Judgment Notwithstanding the Verdict, or For a New Trial, and thereupon, upon consideration thereof and after considera-

tion of the argument of counsel, the Court finds and concludes that:

1. The $25,000.00 in punitive damages awarded to each of the plaintiffs is struck as a matter of Federal Constitutional law. The Court finds that the actual damages awarded by the jury is sufficient in this case and "punitive damages may only be recovered in cases where the award of actual damages is insufficient to dissuade others in like circumstances from committing similar acts in the future." Sprouse v. Clay Communications, Inc., W.Va.,211 S.E.2d 674 (1975).

2. The trial court judge has no right to set aside a jury verdict as excessive unless it is "monstrous, enormous, at first blush beyond all measure, unreasonable, outrageous and manifestly show jury passion, partiality, prejudice or corruption." Syllabus, Addair v. Majestic Petroleum Co., W.Va., 232 S.E.2d

821 (1977). The issue is not what the trial judge believes is excessive. If the evidence presented to the jury will support the verdict, a trial judge has no right to substitute his judgment for that of the jury. "The job of determining such intangible and subjective damages as personal humiliation, mental anguish, and indignity has always been the exclusive province of the jury" as long as they are not excessive. Sprouse v. Clay Communication, Inc., W.Va., 211 S.E.2d 674, 693 (1975). The award of $250,000.00 in compensatory damages was not excessive based on the evidence and West Virginia law.

3. The remaining arguments of the defendants have been considered and they do not warrant a new trial or a judgment for the defendant.

Accordingly, it is ORDERED that the

Motions of the Defendant Ogden Newspapers for Judgment Notwithstanding the Verdict and In The Alternative For A New Trial be, and the same hereby are, denied except that the jury award of punitive damages is hereby disallowed.

ENTER this 9th day of March, 1989.

/s/ Ronald Wilson
Ronald E. Wilson, Judge

IN THE CIRCUIT COURT OF
OHIO COUNTY, WEST VIRGINIA

RONALD L. DIXON,

Plaintiff,

v. Civil Action No. 83-C-427-W

THE OGDEN NEWSPAPERS, INC.,
a corporation,

Defendant.

and

DONALD NAEGELE,

Plaintiff,

v. Civil Action No. 83-C-425-W

THE OGDEN NEWSPAPERS, INC.,
a corporation,

Defendant.

MOTION IN ACCORDANCE WITH RULE 50(b) OF THE WEST VIRGINIA RULES OF CIVIL PROCEDURE AND IN THE ALTERNATIVE MOTION IN ACCORDANCE WITH RULE 59 OF THE WEST VIRGINIA RULES OF CIVIL PROCEDURE

The defendant, The Ogden Newspapers, Inc., moves the Circuit Court of Ohio County, West Virginia to set aside the verdicts herein and the judgments entered thereon in accordance with the motions of this defendant for a directed verdict, both at the close of the plaintiff's evidence and at the close of all the evidence and to enter judgments for this defendant in accordance with said motions and notwithstanding the verdicts.

Alternatively, the defendant, The Ogden Newspapers, Inc., moves the Circuit Court of Ohio County, West Virginia, to set aside the verdicts and the judgments entered thereon and to grant to this defendant a new trial in each of said civil actions based upon the following grounds:

1. The verdicts, and each of them, are contrary to the law and the evidence.

2. The court erred in denying the defendant's motions for a directed verdict at the close of the plaintiffs' evidence for the reasons stated therein.

3. The court erred in denying the defendant's motions for a directed verdict at the close of all of the evidence for the reasons stated therein.

4. As a matter of law the plaintiffs failed to prove a prima facie case of liable or defamation for each of the plaintiffs were "public figures" as a matter of law.

5. As a matter of law the plaintiffs failed to prove by clear and convincing evidence the requisite malice so as to authorize submission of the issue to the jury in cases filed by "public figures".

6. As a matter of law the plaintiffs failed to prove by preponderance of the

evidence that the publication at issue was false.

7. As a matter of law the plaintiffs failed to prove by preponderance of all the evidence that the publication at issue was other than a fair and accurate report of an official proceeding and that the publication was not subject to the common law "record" or "reporters" privilege.

8. As a matter of law the publication at issue was privileged under the doctrine of "neutral reportage" serving to protect republication of statements involving public officials in matters of public interest.

9. As a matter of law the plaintiffs' claims were barred by the common law defense of "truth".

10. As a matter of law the plaintiffs fail to prove by clear and convincing evidence that the defendant had a

high degree of awareness of probable falsity of the publication or a serious doubt as to the truth of the material published.

11. As a matter of law there was no clear and convincing evidence that the publisher or its agents knew that the statements published and at issue in this case were false or that the publisher, by its agents acted with reckless disregard to the truth or falsity of the statement or statements.

12. There was insufficient evidence of malice so as to authorize the return of punitive damage verdicts.

13. The court erred in submitting the issue of punitive damages to a jury.

14. The verdicts and each of them for compensatory damages are excessive and without evidentiary support demonstrating bias and prejudice on the part of the jury which should be sufficient

to shock the conscience of the court.

15. The court erred in submitting the instructions of the plaintiffs to the jury as part of the charge for the reasons stated upon the record by the defendant.

16. The court erred in failing to give the jury the instructions of the defendant as part of the charge for the reasons stated upon the record.

Dated this 16th day of November, 1988.

/s/ Herbert G. Underwood
Herbert G. Underwood

Union National Center East
P. O. Box 2190
Clarksburg, West Virginia 26301

Attorney for Defendant
The Ogden Newspapers

STEPTOE & JOHNSON
Of Counsel

IN THE CIRCUIT COURT OF
OHIO COUNTY, WEST VIRGINIA

RONALD L. DIXON, Plaintiff,

vs.) CIVIL ACTION NO. 83-C-427-W

THE OGDEN NEWSPAPERS, INC.,
a corporation, Defendant.

and (consolidated)

DONALD J. NAEGELE, Plaintiff,

vs.) CIVIL ACTION NO. 83-C-425-W

THE OGDEN NEWSPAPERS, INC.,
a corporation, Defendant.

J U D G M E N T

On October 26, 1988, these consolidated actions came on for trial before the Court and a jury, the Honorable Ronald E. Wilson presiding; and the issues were duly tried on October 26, 1988, October 27, 1988, and October 31, 1988, and the jury on October 31, 1988, rendered a verdict for the plaintiff Ronald L. Dixon to recover of the defendant, The Ogden Newspapers, Inc., a corporation, compensatory damages in the amount of Two Hundred

Fifty Thousand Dollars ($250,000.00) and punitive damages in the amount of Twenty-Five Thousand Dollars ($25,000.00), and rendered a verdict for the plaintiff Donald J. Naegele to recover of the defendant, The Ogden Newspapers, Inc., a corporation, compensatory damages in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) and punitive damages in the amount of Twenty-Five Thousand Dollars ($25,000.00). Accordingly, the Court does

ADJUDGE and ORDER that the plaintiff Ronald L. Dixon recover of the defendant, The Ogden Newspapers, Inc., a corporation, the sum of Two Hundred Seventy-Five Thousand Dollars ($275,000.00) with interest thereon at the rate of ten percent (10%) per annum from October 31, 1988, until paid, and his costs of action. And the Court does further

ADJUDGE and ORDER that the plaintiff

Donald J. Naegele recover of the defendant, The Ogden Newspapers, Inc., a corporation, the sum of Two Hundred Seventy-Five Thousand Dollars ($275,000.00) with interest thereon at the rate of ten percent (10%) per annum from October 31, 1988, until paid, and his costs of action.

ENTER this 10 day of November, 1988.

/s/ Ronald E. Wilson
Judge

IN THE CIRCUIT COURT OF
OHIO COUNTY, WEST VIRGINIA

DONALD J. NAEGELE,

Plaintiff

v. CIVIL ACTION NO. 83-C-425-W

THE OGDEN NEWSPAPERS, INC.
a corporation,

Defendant

OPINION AND ORDER

Presently before the Court is a motion of the defendant, The Ogden Newspapers, Inc., for summary judgment under Rule 56. In considering the motion, the pivotal issue, in the Court's opinion, is whether the publication in issue was protected by the common law reporter's privilege because it was a fair and accurate report of an official proceeding.

In order to grant the defendant's motion the Court must find as a matter of law that the defendant did not abuse its privilege and that there is no evidence

from which different inferences and conclusions might be reasonably be drawn that the articles did not accurately report the judicial proceedings.

There are two articles in issue. On May 3, 1983, an article entitled "STEFANOW: POLICEMAN SUPPLIED INFORMATION" appeared on page one of the defendant's newspaper. In relevant part the article stated:

"Wheeling tavern owner George Stefanow testified Monday that his brother-in-law, Patrolman Donald Naegle (sic) and Sgt. Ronald Dixon of the Wheeling Bureau of Police supplied Stefanow information about a vice raid last summer." And

"Highlighting testimony was Stefanow, who revealed Naegele and Dixon had offered him information about the vice raid on an alleged house of prostitution at 2126-1/2 Main Street last July 15th.

"Stefanow, however, did not say if the information discussed was official police business.

"Police Chief Edward Weith Monday night said he would 'study the testimony' given to determine if 'official police business had been leaked out'."

In the same newspaper was another article on the same trial and in relevant part it stated as follows:

"Defense testimony presented by Stefanow indicated that he discussed the prostitution raid on the Green Door with at least two police officers, and he testified that both had offered information to him.

"Under questioning by Ohio County Assistant Prosecutor A. Dana Kahle, Stefanow identified his informants on the police force as 'my brother-in-law Don Naegele and Sgt. (Ronald) Dixon'.

"Stefanow had at first refused to identify his 'sources' on the police force 'because it might incriminate the officers,' but after consulting with his attorney, William Metzner, he agreed to testify about information given him concerning the vice raid in Center Wheeling."

"I discussed it with Don Naegele and Sgt. Dixon, Stefanow said. In answer to a question from Kahle, Stefanow said he 'sometimes asks two police officers questions and they give me information'.

"However, there was no testimony as to exactly what was discussed between Stefanow and the police officers. Stefanow said it was common knowledge that a 'rookie' is used on vice raids and that he had 'obtained information' about Heldreth before he ever met the new policeman."

Defendant argues that the reports were

an accurate republication of the statements made in the official proceeding.

"Had the articles, in and of themselves, asserted or implied wrongdoing or failed to describe the context of the statements or identify the declarant, plaintiff might be heard to complain of defamation." Defendant's Memorandum, p. 10.

The actual testimony of George Stefanow at the trial in the Magistrate Court in Ohio County, West Virginia, according to the official transcript was as follows:

"Q. And you testified here that you were upset because he had only been on the force two days and what did he know about law; isn't that correct, sir?

A. Because other police officers told me how long he had been on the police force.

Q. Before you called him other police officers told you that?

A. Oh, yes. I have information from other police officers.

Q. You had information from other police officers between the time the residence of 2126-1/2 Market Street was raided and the 17th day of July, two days, from

other police officers; is that what you are telling us?

A. Yes, I am.

Q. Would you tell us the names of those police officers that gave you that information?

A. I will not because it would tend to incriminate them."

And later on in the testimony -

"Q. Would you tell us the names of police officers that informed you of the raid? Let me put it a little closer in time so there is no misunderstanding. (emphasis supplied). Who informed you of the raid at 2126-1/2 Market Street or Main Street?

A. Uh-huh.

Q. Between the time of the raid and the time you called Officer Heldreth. Tell us the names of those officers.

A. Well, my brother-in-law was one.

Q. Who is that?

A. Patrolman Naegele.

Q. Patrolman Naegele told you of the raid?

A. Yeh. Later."

And later on in the testimony -

"Q. Then, it wasn't police officers that told you; was it?

A. No. Not at that time. But I discussed it later with police officers.

Q. Who were the police officers you discussed it with?

A. My brother-in-law.

Q. What is your brother-in-law's name?

A. Naegele.

Q. What is his first name, sir?

A. Donald Naegele.

Q. Any other police officers?

A. Sgt. Dixon.

Q. Sgt. Dixon. When did you discuss it with Sgt. Dixon?

A. I don't recall the exact date. It was after the raid.

Q. How long after the raid?

A. I have no idea. It might have been a day, two days, three days.

Q. Shortly after the raid? Within a week?

A. Within a week." (emphasis supplied)

The testimony was quite clear that the information given to Mr. Stefanow was given sometime after the Wheeling police raid on a suspected house of prostitution. That acute information is nowhere to be found in either article. Without that information can it be found that as a matter of law the articles accurately reported the judicial proceeding?

The facts in this case do not warrant the application of summary judgment. At least one genuine issue of material fact remains which precludes the granting of summary judgment. That triable issue of fact is whether the article was a fair and accurate report of the proceedings in Magistrate Court and therefore entitled to the reporter's privilege.

ORDER OF COURT

On the 28 day of February, 1984, it

is ORDERED that the Plaintiff's Motion for Summary Judgment is denied.

ENTER this 28 day of February, 1984.

By the Court:

/s/ Ronald Wilson
Judge

IN THE CIRCUIT COURT OF
OHIO COUNTY, WEST VIRGINIA

DONALD J. NAEGELE

Plaintiff,

v. // CIVIL ACTION NO. 83-C-425W

THE OGDEN NEWSPAPERS, INC.,
a corporation,

Defendant.

MOTION IN ACCORDANCE WITH
RULE 12(b)(6) OF THE WEST VIRGINIA
RULES OF CIVIL PROCEDURE ON
BEHALF OF THE DEFENDANT

The defendant The Ogden Newspapers, Inc., moves the Court pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure as follows:

1. To dismiss the action because the complaint fails to state a cause of action against this defendant upon which relief can be granted for, among other reasons, the following:

a. That the matters and facts alleged in the plaintiff's complaint do

not state any such facts as may constitute a cause of action for libel in that it positively and affirmatively appears from the face of the complaint that the defendant did not publish any libelous or defamatory matter pertaining to the plaintiff;

b. That the matters and facts alleged in the plaintiff's complaint do not state any such facts as may constitute a cause of action for libel in that it positively and affirmatively appears from the face of the complaint that the language asserted to have been published by this defendant does not constitute at law a libel nor is it in any matter defamatory;

c. That the matters and facts alleged in the plaintiff's complaint do not anywhere state such facts as may constitute a cause of action for libel in

that the words alleged to have been published by this defendant are, as a matter of law, within the protection of the first amendment to the Constitution of the United States and the Constitution of the State of West Virginia;

d. That the matters and facts alleged in plaintiff's complaint do not anywhere state such facts as may constitute a cause of action for libel in that the words alleged to have been published by this defendant are, as a matter of law, absolutely privileged;

e. That the matters and facts alleged in the plaintiff's complaint do not state any such facts as may constitute a cause of action for libel and that the publication is qualifiedly privileged if accurate and does not constitute a substantial departure from the record of the judicial proceeding;

f. That the matters and facts alleged in the plaintiff's complaint do not anywhere state such facts as may constitute a cause of action for libel in that the words alleged to have been published by this defendant are protected by a constitutional privilege of neutral reportage; and

g. That the matters and facts alleged in plaintiff's complaint do not anywhere state such facts as may constitute a cause of action for libel in that the words alleged to have been published by this defendant are, as a matter of law, protected by constitutional privilege of opinion and fair comment.

Dated this 28th day of June, 1983.

/s/ Herbert G. Underwood
Herbert G. Underwood

/s/ Irene M. Keeley
Irene M. Keeley

Union National Center East
P. O. Box 2190
Clarksburg, WV 26302-2190

Attorneys for Defendant

STEPTOE & JOHNSON

Of Counsel

IN THE MAGISTRATE COURT OF
OHIO COUNTY, WEST VIRGINIA

THE STATE OF WEST VIRGINIA

Plaintiff,

-vs- CASE NO. 82-M-1020

GEORGE STEFANOW

Defendant.

TRANSCRIPT OF PROCEEDINGS

BEFORE JACK B. ROTHBART, MAGISTRATE

TESTIMONY OF GEORGE STEFANOW

MONDAY, MAY 2, 1983

APPEARANCES:

On behalf of the State:

DENNIS NAUM, Prosecutor
BY: A. DANA KAHLE, Assistant
City-County Building
Wheeling, West Virginia 26003

On behalf of the Defendant:

WILLIAM R. METZNER, Esquire
2212 National Road
Wheeling, West Virginia 26003

I N D E X

WITNESS:	EXAMINED BY:	PAGE
GEORGE STEFANOW	Mr. Metzner	3 [A-
	Mr. Kahle	16 [A-
	Mr. Metzner	27 [A-

G E O R G E S T E F A N O W

having been first duly sworn, was examined and testified as follows:

BY MR. METZNER:

Q. Would you state your name please?

A. George Stefanow.

Q. You are the defendant in this case, Mr. Stefanow?

A. Yes, sir.

Q. How old are you?

A. Fifty-nine.

Q. And where do you live?

A. 22 Twenty-first Street.

Q. How long have you lived there?

A. There, approximately four years.

Q. What is your occupation?

A. I am retired, United States Navy

and self employed presently.

Q. And what is the nature of your employment?

A. Novelty shop and a club.

Q. What is the name of that club?

A. Chief's Club.

Q. Where is it located?

A. 2207 Market.

Q. When did you retire from the Navy?

A. I retired in July, 1971.

Q. And how long did you serve in the Navy?

A. Thirty years.

Q. And did you see any combat duty?

A. Three wars, yes, sir, three wars.

Q. And where were you born and reared?

A. I was born in Wheeling, West Virginia.

Q. And where in Wheeling?

A. I was born and raised around Twenty-second and Chapline Street.

Q. So where you are now is your old home area?

A. Yes, sir.

Q. Now, I am going to direct your attention to July 17, 1982, the date that Mr. Robert Heldreth accuses you of making a threatening phone call in an harassing manner and so forth.

A. Yes, sir.

Q. Tell us your side of it.

A. Well, I understood there was a raid was made on a house of prostitution down-- I got a phone call that the raid was made in a place and my name was used.

So, I didn't dwell on it too much at the time. So, this one evening, my wife and a friend of ours was sitting there eating and we was discussing it because they said it was an Officer Heldreth that used my name and I didn't know Heldreth because I never met him before.

And, we were talking about it, because I knew his relation--somebody said his father-in-law was Harold Brieding. I used to work out with weights and work out years ago--raised with Harold's brother, Larry Brieding and I knew Bernie Brieding from working for McCanns Brewery.

So, I didn't know how to spell Heldreth, so I just--we discussed it, my wife and I and I said I don't understand why this guy would use my name like this. She was a little upset about it and I was too.

So, we was talking about it and she suggested, "Why don't you just give him a call and find out what the story is. Maybe somebody put him up to it." So I called Bernie Brieding's home and there was no answer, but I know Bernie. And, I called Larry Brieding. There

was no answer the first time and then I called Harold Brieding, which was his father-in-law.

Q. All right.

A. Then, I didn't get no answer. Then I finally called about ten or fifteen minutes later and I got a call from-- somebody answered the phone at Larry Brieding's home. It was his daughter, Lisa, and I asked her, I told her who I was and I said, "This is George Stefanow." She remembered me.

MR. KAHLE: Your Honor, I object to the statements he might have made to Lisa as being hearsay.

MR. METZNER: Well, statements that other people said to him would be, of course Your Honor. Go ahead. Try to refrain from saying what other people said.

THE COURT: Just what you said-- what the conversation was

about.

A. What I did was ask her the phone number, you know, because I didn't know how to spell Heldreth. I didn't know if it was H-i-l or-- I didn't know the name.

So, I just asked Lisa, I said, "Do you know Heldreth's-- could you give me his phone number because I can't spell his name?" because there's a lot of Heldreths.

Q. Well, did you obtain the phone number?

A. She gave me the phone number.

Q. Then what did you do?

A. After I got the phone number, I dialed the number-- I don't recall the number now.

Q. Where were you at the time?

A. At home. We was sitting at the table. We have a long-- in our kitchen,

we have a long formica top table where we sit in the kitchen. The three of us was sitting there, me, Delores Johnson and my wife.

Q. Who is Delores Johnson?

A. Delores Johnson, she works for me and she is more or less a ward of ours. She eats with us and we take care of her. She is under a doctor's care.

Q. Where does she live or where does she work?

A. She works part-time for me at the Chief's Club.

Q. Then what happened?

A. So, we discussed it. So, I got the number and said I might as well call. I want to find out, because I figured the man didn't know me and using my name in this place when they made this raid down there, somebody-- because I have got lawsuits. I have got lawsuits against me by certain officers on the

police force-- who told him that to gain entrance by using my name because I knew these people for thirty or forty years. I knew the people in this house. The man is crippled. I have known him for over thirty years.

Q. By the man, who are you referring to?

A. Mr. Riggi.

Q. And he has a disease?

A. He has lupus. He has got this Lou Gehrig's Disease, in a wheelchair.

Q. And his wife?

A. Lucille.

Q. And she runs the Green Door; is that correct?

A. Yes, sir. Yes, sir.

Q. Do you have any interest in that?

A. No, sir.

Q. Go ahead from there.

A. So, when I dialed, a woman answered the phone, a girl. Sounded like a

young voice. I didn't know whether it was his wife or daughter or sister or anybody.

So, I said, "This is Mr. Stefanow. Is Mr. Heldreth there?" and she said, "Yes. One moment."

So, he came to the phone and I said, "Heldreth?" and he said-- I can't remember the exact words. And I said, "Heldreth, I want to ask you a question." I said, "You made a raid the other night on the 15th down at the Green Door." and he said, "I don't know what you are talking about." I said, "The raid that you made the other night, you went up there and you used my name and Vince Tedeschi's name up in there. Why would you use-- who told you to use my name?"

What I was trying to find out, who gave him my name to use to gain entrance into this place.

Q. Why?

A. Because I have lawsuits against Habursky and the police force, vice squad people.

MR. KAHLE: Your Honor, I am going to ask that this testimony be stricken and the jury instructed to disregard it. We are concerned here with this particular charge, the reasons, and these are self serving declarations on his part. He is mentioning other litigations that certainly have no place in this particular forum at this time.

MR. METZNER: Your Honor, the State's prosecuting witness brought out the newspaper business long before Mr. Stefanow and we have, I think, a right to explain it.

MR. KAHLE: On cross-examination, not on direct examination.

MR. METZNER: Cross-examination of whom? This is direct of Mr. Stefanow.

MR. KAHLE: That is right. On cross-examination of the State's witness you brought-- the information was brought out.

MR. METZNER: It was brought out first in direct.

MR. KAHLE: I am objecting to any testimony relative to any lawsuits from any other people.

MR. METZNER: Your Honor, Mr. Heldreth is saying that why he feared Mr. Stefanow was something he read in the newspaper and our contention is the only thing he read in the newspaper that would scare him would be civil lawsuits that Mr. Stefanow had filed against two officers.

MR. KAHLE: Your Honor, note my objection to it. I am not-- pardon my phrase, but I don't want to get involved in a witch hunt here. I am concerned with one thing and that is a telephone call that was made on July 17th from this man to this man and whether or not the effects of that phone call put this man in fear. That is the only issue before this court, not something that happened two or three months before with him and the police department or something that happened two or three months afterwards or six months afterwards between these two or anybody else.

I am concerned with the night of July 17. I haven't objected to anything that occurred on the 15th and I have no

objection to that. If he wants to testify as to his associates and friends at another place that might have told him something, that is fine, but to go into a big long harangue about lawsuits and everything else, Your Honor, I think the jury should be instructed to disregard the entire testimony at this state.

MR. METZNER: Two things, Your Honor.

THE COURT: I appreciate your objection. The only thing he is trying to explain is why he called Mr. Heldreth. I don't want it belabored. If he was afraid of that, let's just get that one statement. That is all I am going to allow.

MR. METZNER: Our point would

be that any apprehension Mr. Heldreth feared would have been from being sued for what he did rather than physical harm.

THE COURT: I want the jury to disregard that as argument. He can bring that up in his closing argument, but it is not going to be of entry and I don't want him to answer that. Proceed.

Q. (By Mr. Metzner) Keeping away from the suits and so forth, you thought that somebody put him up to it; is that what you are saying?

A. Yes, sir. Very much so.

Q. And you identified them as who?

MR. KAHLE: Your Honor, I object unless this was a conversation between these two people on July 17th. Now, he is going by the left side of the bush instead of the right side of the bush.

He is trying to do what...

MR. METZNER: I will take the right if you take the left.

MR. KAHLE: If it pleases the court, I wish the court would instruct him to discontinue that line of questioning because it is not relevant to this case.

Now, if we get into that witch hunt, Your Honor, we are going to be here for a week and it doesn't involve any of his lawsuits with anybody else. It doesn't involve any of his antagonism with the police department. It involves a telephone conversation between these two people and that only.

THE COURT: Mr. Metzner?

MR. METZNER: Your Honor, that is a little narrow, I believe. I think we are talking about fear

and reasonable apprehension, bodily harm and motivation. In other words, Mr. Stefanow's intent. All those things, the jury is going to have to decide. I think it is a little wider scope than that one telephone call to indicate why Officer Heldreth is apprehensive and why Mr. Stefanow did call the man, would have a bearing on what the jury believes.

THE COURT: Well, I think I am going to let Mr. Stefanow testify. He has indicated he has had past problems and he was gravely concerned, but I think we'll leave the names out at this time. I will sustain the objection.

Q. (By Mr. Metzner) Go ahead.

A. Your Honor, I don't mean to mention no names. I am trying to pin down moti-

vation here, why I think I...

THE COURT: Let counsel direct his questions to show why he was apprehensive and made the call.

Q. (By Mr. Metzner) Well, let's just go ahead with it. You called and got Heldreth; is that correct?

A. Yes, sir.

Q. What was said?

A. As soon as he-- I found out later it was his wife. I didn't know who she was at first. I addressed myself and I told her who I was because I didn't know whether I was talking to his daughter.

Q. Did you tell her who you were?

A. I told her, I said, "This is Mr. Stefanow. Can I speak to your husband?" That is exactly the way it went. And she said, "Just a moment." That was it. When he came to to the phone, the first thing I asked him, I said, "Heldreth, you

made a raid down there on the 15th down at the Green Door." He said, "I don't know what you are talking about." This was the only answer I got from him. "I don't know what you are talking about."

The second question, I said, "Heldreth, can you tell me who put you up to using my name? Who told you when you made that raid..." He is new on the police force. He has only been on the police force two days he was on the 13th and this was the 15th-- two days on the police force and already he is an expert.

I said, "Who..." He said, "I don't know what you are talking about." I said, "Well, let me tell you something, son, that is bad business. You should never..." boom, I got hung up. He hung up on me.

Q. Did you say anything else to him?

A. After he hung up on me?

Q. Well, no. Before.

A. That was the extent of the conversation.

Q. Did you say, answer yes or no, that you would get him?

A. No, sir. That's not my-- I don't -- Definitely not.

Q. How about something to the effect that you would take care of him?

A. No threats whatsoever, sir. No threats whatsoever.

Q. All right. Did you have occasion to talk to Mr. Heldreth at any time after that?

A. No, sir.

Q. Did you know Mr. Heldreth prior to July 17th?

A. Never knew him. I had never seen him before.

Q. Do you recall him ever coming to Saseen's Restaurant?

A. I don't recall. I eat in Saseen's everyday. I have lunch there everyday. I don't recall ever seeing him at Saseen's Restaurant.

Q. By the way, who is the owner of the Duck Inn?

A. Dave Misencik.

Q. Is there a person by the name of Joey who runs...

A. I never heard of a Joe and I have never been in the Duck Inn in five years.

MR. METZNER: All right. I have nothing further.

THE COURT: Thank you. Mr. Kahle, cross-examination.

E X A M I N A T I O N

BY MR. KAHLE:

Q. Mr. Stefanow, when did you first become aware of the length of time Officer Heldreth had been on the police force?

A. When I checked into it with the Clerk's Office.

Q. Which Clerk did you check into it with?

A. I don't know her name, the one upstairs.

Q. In the City Building?

A. City Building.

Q. Now, you are telling us-- When did you check into that?

A. Oh, it must have been-- it was after the arrest.

Q. After you were arrested by Officer Heldreth?

A. Right.

Q. Or after Officer Heldreth swore out the warrant?

A. It was after that. Yes, sir.

Q. Then, you didn't know, at the time you made the telephone call, that he had only been on the force for two days; is that correct?

A. Well, I didn't know how long he had been on the police force.

Q. But you testified earlier to the jury that you knew that he had only been on the force two days and how did he know so much about police business.

A. I decided this later after I made the phone call.

Q. Oh, then you are telling us what you decided later is what you are testifying to now; is that correct?

A. You are trying to put words in my mouth.

THE COURT: Let's not argue. Just answer the question. Phrase it so he can understand it.

A. Anybody who makes a raid, any of these houses busted, they are usually rookies. I never heard of the man. I wanted to find out who he was because I had never heard of him before. Why would he use my name? Most of them are

rookies. They have been on the police force two days, four days, five days. They use them to make busts in these places, whether it is in bars, houses of prostitution...

Q. Are you offering this as expert opinion, sir?

A. Do what?

Q. Are you offering this as an expert opinion?

A. It is common knowledge.

MR. METZNER: Your Honor, he has answered his questions.

MR. KĀHLE: I asked when he found out Officer Heldreth had only been on the force two days. Now, ...

A. The exact time, I don't know, but I did check it with the Clerk's Office.

Q. It was after you had been arrested; wasn't it?

A. Oh, yes.

Q. And you testified here that you were upset because he had only been on the force two days and what did he know about law; isn't that correct, sir?

A. Because other police officers told me how long he had been on the police force.

Q. Before you called him other police officers told you that?

A. Oh, yes. I have information from other police officers.

Q. You had information from other police officers between the time the residence of 2126½ Market Street was raided and the 17th of July, two days, from other police officers; is that what you are telling us?

A. Yes. I am.

Q. Would you tell us the names of those police officers that gave you that information?

A. I will not because it would tend to incriminate them.

Q. Will, if it would tend to incriminate them...

A. The police officers.

Q. I don't believe you have the privilege...

A. Well, I have that privilege.

MR. METZNER: May I discuss something with Mr. Stefanow?

MR. KAHLE: Would you instruct the witness to answer the question?

MR. METZNER: I don't know why he is talking about incrimination.

THE COURT: Let him confer with counsel.

(Whereupon, Mr. Metzner and Mr. Stefanow confer.)

Q. (By Mr. Kahle) Would you tell us the names of the police officers that in-

formed you of the raid? Let me put it a little closer in time so there is no misunderstanding.

Who informed you of the raid at 2126½ Market Street or Main Street?

A. Uh-huh.

Q. Between the time of the raid and the time you called Officer Heldreth. Tell us the names of those officers.

A. Well, my brother-in-law was one.

Q. Who is that?

A. Patrolman Naegele.

Q. Patrolman Naegele told you of the raid?

A. Yeah. Later.

Q. I am talking about between the 15th, when the raid occurred and the 17th when you called this man. That's the ones you said...

A. No. No. I got the call directly from the people that owned the building.

Q. You got the call directly from the people that owned the building?

A. That is right.

Q. And who owned the building at that time?

A. Mrs. Riggi.

Q. Was the building theirs at that time?

A. I don't know.

Q. Well, didn't you participate in a sale on a land contract of that building to these people?

A. Not hardly. I don't own the building.

Q. Didn't the Stefanow estate own that building?

A. No, sir. You are all wrong. Nick Stefanow, not George Stefanow.

Q. You are not familiar with that at all?

A. No, sir.

Q. You did know that Nick Stefanow owned the building?

A. Yes, sir.

Q. Did Nick Stefanow own the building at the time this happened or was he dead?

A. He was dead.

Q. Was it sold by the estate?

A. It was sold by Mr. Petroplus, the estate, the lawyer.

Q. By the estate?

A. Right.

Q. And do you know to whom it was sold?

MR. METZNER: Your Honor, he is going far afield on this.

THE COURT: Try to limit...

MR. KAHLE: Your Honor, I'm trying to find out who gave him the information relative to the raid and to the fact of the raid as he was advised.

THE COURT: So far, he has stated that he got a call from...

MR. KAHLE: From whom?

THE COURT: This building.

A. I just told you, Mrs. Riggi.

Q. (By Mr. Kahle) Mrs. Riggi told you?

A. Right.

Q. That is Lucille Riggi?

A. Right.

Q. And what time did she call?

A. I don't have no idea what time of the day it was.

Q. Well, was it the next day or was it the night of the raid?

A. It was about the next day.

Q. About the next day. What time about the next day?

A. I have no idea.

Q. Morning? Noon?

A. I don't recall.

Q. Was it the afternoon?

A. That's been a long time ago.

Q. Then, it wasn't police officers that told you; was it?

A. No. Not at that time. But, I discussed it later with police officers.

Q. Who were the police officers you discussed it with?

A. With my brother-in-law.

Q. What is your brother-in-law's name?

A. Naegele.

Q. What's his first name, sir?

A. Donald Naegele.

Q. Any other police officers?

A. Sergeant Dixon.

Q. Sergeant Dixon. When did you discuss it with Sergeant Dixon?

A. I don't recall the exact date. It was after the raid.

Q. How long after the raid?

A. I have no idea. It might have been a day, two days, three days.

Q. Shortly after the raid? Within a week?

A. Within a week.

Q. Let me ask you: Do you discuss the events that occur in your neighborhood with these police officers?

A. Yes, because that is my neighborhood.

Q. They usually advise you of what is going on?

A. They don't advise me. I ask them.

Q. You ask them and do they tell you what is going on?

A. Sometimes.

Q. Sir?

A. Sometimes.

Q. Sometimes they tell you the facts of what occurred during a raid?

A. Not necessarily. I got this information from the people that was raided.

Q. You say Mrs. Riggi called you? Tell me the conversation that you had with Mrs. Riggi about this information that you got?

A. She told me there was a raid that was performed down there and that my name was used, mine and another gentleman's name was used.

Q. Did she hear your name being used?

A. Well, she evidently got that from...

Q. Did she tell you she heard your name being used?

MR. METZNER: Calling for hearsay, Your Honor. It is all speculation where she got it.

THE COURT: We won't go into hearsay.

Q. (By Mr. Kahle) Then, you're basing what you did, your telephone conversation, on the conversation you received from a person who has been con-

victed of operating a house of prostitution?

MR. METZNER: I will object.

Q. (By Mr. Kahle) Who has been convicted of using a house for purposes of prostitution.

A. Let me go as far as...

MR. METZNER: I object. I am objecting Your Honor, on the grounds that any convictions, if any, are not a matter of record.

MR. KAHLE: I believe they are a matter of record in the Circuit Court of Ohio County, West Virginia.

MR. METZNER: Not in this court. He just told you that she ran a house.

MR. KAHLE: The original convictions were in this court.

MR. METZNER: Your Honor, there is no convictions in evidence

here. She ran a house, he just told you that.

THE COURT: I will leave the record stand. We will disregard the convictions in this court.

Q. (By Mr. Kahle) Then, your sole information was from Lucille Riggi?

A. Now, I would like to add another thing. The next day when I found out about it, okay, when my name was used, when I got the phone call, I went to the City Building and I approached Chief Weith and he called Detective Joe Davis in with him.

I asked Joe Davis why when they made a raid down there, why they would have somebody use my name and Joe Davis informed me we use any ploy we can, anybody's name or any ploy we can to get into a house of prostitution.

I said, "In other words, you condone using my name?" and he said, "We will use any name," and I said, "What if I used your name if I go to rob a bank? Would you like that?"

And all it got-- my answer was from the Chief and Joe Davis was just a smirk and a smile. In other words, they wasn't going to do anything about it. They didn't deny it. They didn't admit it. But, they did not deny it.

Q. Made you a little bit upset; didn't it?

A. Well certainly.

Q. Made you mad; didn't it?

A. No. No. Upset.

Q. Made you upset but didn't make you mad?

A. No. I don't get mad too easily.

Q. You don't get mad. You get even; right?

THE COURT: Now wait. I am going to instruct him not to answer that. That calls for a conclusion, very very definitely.

A. What do you mean by getting even?

Q. (By Mr. Kahle) By calling a police officer and threatening to do him in if he used your name again.

A. You say I did that?

Q. I am asking.

A. I did not threaten this police officer. The conversation lasted about ten, fifteen seconds. That's not my style to threaten anybody, Dana.

Q. Your wife testified that there was quite a bit of conversation, more than just ten or fifteen seconds.

A. We was in amicable conversation, wondering why he would use my name. He don't even know me. I was just trying to find out who put him up to using my name-- was it another one of the detec-

tives' idea to use my name? He didn't know me.

MR. KAHLE: I have no further questions.

THE COURT: Mr. Metzner?

E X A M I N A T I O N

BY MR. METZNER:

Q. You said Delores Johnson was there?

A. Yes, sir.

Q. Was she there at your home throughout the...

A. She was sitting right there at the table having conversation with us.

Q. Throughout the whole conversation, within hearing distance?

A. Yes, sir.

MR. METZNER: I have nothing further.

(Whereupon, George Stefanow's testimony was concluded.)

THE STATE OF WEST VIRGINIA:

COUNTIES OF MARSHALL & OHIO: SS:

C E R T I F I C A T E

I, VICTORIA J. DUDZIK, Notary Public within and for the Counties of Marshall & Ohio, State of West Virginia, duly commissioned and qualified, do hereby certify that the within-named witness was duly sworn as prescribed by law; that the testimony then given by him was by me reduced to Stenotype in the presence of the witness; afterwards reduced to typewriting under my direction, and that the foregoing is a true and correct transcription of the testimony so adduced during the proceedings of the within cause.

I do further certify that this testimony was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal of office at Wheeling, West Virginia, on the 1st day of June, 1983.

/s/ Victoria J. Dudzik
VICTORIA J. DUDZIK
Notary Public within and for
the Counties of Marshall & Ohio
State of West Virginia

My Commission Expires:

April 6, 1991

THE INTELLIGENCER
(all editions, front page)
March 12, 1983

RIFT IN POLICE RANKS APPEARS TO WIDEN

By WARREN BAYS
The Intelligencer Staff

A split in the ranks of the Wheeling Bureau of Police appeared to grow wider Friday as the result of nearly nine hours of courtroom controversy over a barroom altercation last November.

At the end of the day, Jeffrey S. Davis had been bound over to the Ohio County grand jury on a felonious assault charge and William S. McCormick had been exonerated of assaulting Davis.

But according to testimony given in the two cases before visiting Magistrates Nat S. Marino of Brooke County and Norman Ferrari of Hancock County, the rift in the Wheeling Bureau of Police has grown wider.

The divisions in the ranks and an arrest of Davis by McCormick years ago were cited as reasons for the altercation at the Cork and Bottle in downtown Wheeling last Nov. 27.

Testimony from Cpl. Louis Walker indicated that the divisions among policemen are growing wider.

"They used to be friends of mine," Walker said of sergeants Ronald Dixon and Robert Mazur, two of the figures involved in the assault hearings featuring charges against McCormick and Davis.

Walker said he and a friend, Carol Pajak, were out on the town with Mr. and Mrs. Dixon, Mr. and Mrs. Mazur and McCormick. After the altercation, in which McCormick was struck in the face with a beer bottle, Walker said he had been expected to testify to something he hadn't seen.

"They put my name down as a witness and I realized they wanted me to testify to something I didn't see," Walker testified. "I made the assumption they thought I'd assist them," he continued in response to a question from Davis' attorney John Turak of Moundsville.

"I realize you've been placed in a delicate position," Turak told Walker.

"I don't know ... we were friends. I assumed they thought I'd testify. I called Sgt. Dixon on the phone and told him I don't want to be called in, that if they call me in court I'd have to say exactly what I saw. I've been placed on the spot," Walker continued.

Under a direct question, Walker said he is "no longer friends" with Dixon and Mazur.

Walker's testimony showed that he had walked past Davis before the altercation began, and saw no problem. Walker went to

the middle part of the main floor bar and ordered food and drinks for himself and Ms. Pajak.

"They stopped and turned his (Davis') way and I walked on by. They stopped and turned around toward Jeff (Davis)," he said. Earlier, McCormick and Dixon had said that Davis had thrown a shoulder into Dixon as he passed by, supposedly instigating the altercation which followed.

Earlier testimony from McCormick showed his attempt to keep Davis from "lunging at and hitting him (Dixon) with a beer bottle."

According to McCormick, he followed Dixon and Walker in walking single file toward the bar area.

(Continued on Page 3)

POLICE DEPARTMENT RIFT APPEARS WIDER

(Continued From Page One)

Walker, his testimony indicated, passed by when Davis is alleged to have "thrown" a shoulder into Dixon and then yelled an obsenity at him.

McCormick testified that he was only trying to keep Davis from attacking Dixon. In so doing, McCormick, who testified to holding a black belt in Karate, grabbed Davis and shoved him against a partition. Testimony from various witnesses indicated McCormick "pinned" him against a wall.

It was during this skirmish that Davis is alleged to have swung his beer bottle, striking McCormick in the face, beneath the right eye, causing a serious cut.

It was for this that Davis was bound over to the April term of the grand jury on the felonious assault charge.

Following this action, a jury was seated to hear the battery charge filed by Davis against McCormick, but it failed

to hear any testimony from Davis.

Acting on the instructions of Turak, Davis took the Fifth Amendment response to 13 questions asked him by the prosecution and the defense.

Davis refused to answer because, as his attorney said, "He doesn't come here willingly" following the early morning case in which Ferrari ordered him held for grand jury action.

Questions asked by McCormick's attorney, Joseph Bonie, included "Were you ever arrested by McCormick on narcotics charges?" to which Davis answered, "I'm sorry sir, I'll have to take the Fifth."

This was the first time during the proceedings that the arrest, or what could be part of Davis' past record, was mentioned. Later, McCormick said he had arrested Davis several years ago. Camilletti told the court that "nothing came of the arrest."

He asked McCormick if he had become angered over the fact that Davis had not been prosecuted and McCormick said "it is normal to lose 50 percent of drug cases."

During McCormick's testimony he had said Davis had indicated that his father, Lt. Joseph S. Davis, would "come down" on him for the altercation at the Cork and Bottle.

Camilletti asked him if this was a concern of his. "I thought his father would use, abuse, his authority on me. The department has done this before," he said.

McCormick had once worked as an "undercover narcotics" policeman under Dixon's orders when he was on the force.

However, McCormick has been dismissed from the force for alleged "dereliction of duty" involving "leaving his post against a direct order from the chief of

police that he not do so."

Testimony also brought out that Dixon had once been in charge of the detective division which is now headed by Lt. Davis. Dixon said he lost the job as chief detective "the day Ed Weith became chief.

In his closing arguments to the jury, McCormick's attorney, Bonie, said the case had been "tampering with something far more involved.

"There has been no misconduct on his father's part brought to my attention. But on the part of his boy, though, is different."

He added that there has been a lot of inference "that could be true."

He reminded the jury that Dixon had testified to "having my own problems" with the police department in that he was given a suspension by Police Chief Weith last year.

However, Dixon testified in Court, "Thanks to you (Bonie, who was Dixon's attorney) the suspension" didn't stand up and was recently overturned by the Police Civil Service Commission, of which McCormick is a member.

Bonie further suggested that the barroom altercation might be "part of a big problem ... a big picture. You can infer ..." he told the jury, "If you think (the altercation) was because of bad blood between the Davis and Dixon family."

Camilletti told the jury, in his final closing arguments, that "nothing ever came of the arrest' of Davis by McCormick on the drug count."

Prior to Davis being bound to a grand jury on a felonious assault charge, testimony had been heard from Dixon and his wife, Karen; Mazur and his wife, Sally; commercial pilot Ronald A.

DelVecchio and Robert Palmer.

Testifving on Davis' behalf in the afternoon was a host of employees of the Cork and Bottle who all testified that McCormick had "pushed and shoved" Davis and had "pinned" Davis against a wall.

The afternoon proceeding ended at 5:33 P.M. when the jury returned a verdict of innocent against McCormick.

The case went to the jury at 5:13 P.M.

The jury trial was the first presided over by Magistrate Marino, who signed a contempt of court warrant against Robert Sadosky Jr. of 217 South Broadway St., Wheeling, for failing to appear for jury duty.

The jury consisted of three men and three women.

The day's proceedings were unusual in that Camilletti, serving as an assistant prosecutor in the Ohio County prosecuting attorney's office, prosecuted Davis

in the morning on the charges filed against him by McCormick; and then prosecuted McCormick in the afternoon on charges filed by Davis.

That procedure is not illegal, Turak said, but is "questionable and unethical, but we didn't question it before the proceeding started."

THE INTELLIGENCER
(all editions, front page)
March 16, 1983

WEITH FAULTS 'OUTSIDE INFLUENCE'

By WARREN BAYS
The Intelligencer Staff

"Outside influences" tampering with certain officers of the Wheeling Bureau of Police are responsible for dissension in the ranks, Police Chief Edward Weith Jr. said Tuesday.

"I feel very strongly that we have officers being influenced from the outside," Weith said in response to questions about a split in the ranks of uniformed officers.

Weith, a veteran of 32 years with the department, including nine as chief, said "only about six or so" officers are "disgruntled enough" to cause dissension in the ranks.

The feeling of discontent surfaced again last Friday during a series of

magistrate court hearings on charges involving a former policeman and the son of an officer who is currently on the force.

"There is a very good possibility that pressure is being brought upon the department by outside interests who, I believe, would like to see someone else as police chief. In 32 years here, I've seen pressure brought upon chiefs, and I'll tell you there is no pressure on this chief to open things up or to do anything that isn't right.

"But there are groups," Weith continued, "that have different views and would like to see a different chief of police, and a different city manager. But those pressures are being brought upon certain individuals of this department and not on me."

Weith said he believes he has "stepped on certain toes, outside this depart-

ment, and perhaps from within."

He said he feels certain some police department information has been "leaked" to outsiders.

"We've sent new men out on undercover work, and on assigned raids, and their identity has been known by the time they left the building," Weith said.

"We can't keep the identity of a new officer secret. Their description is given to certain people. That's why we sometimes have to be so secretive about things. That's why, too, gaining a man's loyalty is so important. There's only so much you can keep secret, especially in a city this size," Weith added.

Trying to prove who is responsible for this "is next to impossible," Weith said. "But we have pretty good ideas who has been responsible."

When asked what the outside influences hope to gain Weith said, "For years there

were perhaps as many as 15 houses of prostitution. Today we know of two. Maybe somebody wants more illegal activity."

(Continued on Page 3)

WEITH CITES 'INFLUENCE'

(Continued From Page One)

Wheeling "is a far cry from what it was 20 years ago," Weith added. "We don't have near the problems that we had back them [sic]. We don't have the amount of crime, either. People say go padlock a house. Well, we have. But it takes four years to do this in court, and during the time we're trying to close it, they're making plans to move down the street."

The chief continued, "There will always be those who want more of those activities. There are those on this force who would want to see someone else as chief to have these things run differently. Some people on the outside feel these ac-

tivities would be more open if another man were chief.

"We've stepped on the toes of a lot of people and these people are upset. If someone on the street can influence an officer, he will, if he thinks the final outcome will be to influence the city manager to making a change (by) naming a new chief."

Weith said he is saddened by reports of widespread dissension in the ranks because "I'm really proud of this department. We've got just a few, maybe five or six or seven, who would want changes, and who keep stirring up problems. Why should this entire department have to suffer because of them?

"We don't have major unrest. Go out and talk to our officers and see what they think and how they feel. There are more and more every day who find out who the disgruntled are and why they are that way.

There are those who have been like this for the past 12 years that I know of and I don't see anything that will change them.

"I honestly know it's (police morale) better today than it's been in recent years. You will always have someone who wants to wrestle leadership of the force away from the chief and to take over the chief's job.

"But there can only be one person as chief, even though there are a few who feel they can always do a better job. Some get upset because they are put outside. Some get upset because they can't be off every weekend.

"All I can do is the best scheduling I can with the men available, and then hope for some loyalty. There are some men who may be better suited elsewhere, but because of rank, I'm not allowed to make the moves. Rank comes first, the

commission (Police Civil Service Commission) says so," the police chief added.

The dissension "hasn't hurt the performance of this department. And as far as a man liking or disliking another man during his off hours, well I have no control over that, and want none. I am concerned when I hear about officers not getting along with each other. But my main concern is that they do their job as police officers for this city."

As policemen, "we are human, too," Weith said. "I wish the entire department wasn't judged on what is done by a couple or three. We have our disgruntled just like any business will have 10 percent of its employees unhappy...no matter where they are or what line of work they are in."

Weith said he has "learned a lot while being police chief. I've learned not to be naive. I've learned not to

believe and trust everyone. I've had to discipline some of my friends just like I've had to discipline others. But in everything, I've been fair with every man here, even if he wasn't fair with me."

Weith said the "outside influences" aren't forcing his hand because "I work for the city manager" and "fortunately I'm working for a city manager who can't be influenced by outsiders."

THE INTELLIGENCER
(all editions, front page)
May 3, 1983

STEFANOW: POLICEMEN SUPPLIED INFORMATION

By WARREN BAYS
The Intelligencer Staff

Wheeling tavern owner George Stefanow testified Monday that his brother-in-law, Patrolman Donald Naegele, and Sgt. Ronald Dixon of the Wheeling Bureau of Police supplied Stefanow information about a vice raid last summer.

Before the court trial, two off-duty Wheeling police officers were responsible for serving two subpoenas — one following a foot race — so that Stefanow's misdemeanor trial could proceed uninterrupted in Ohio County Magistrate's Court Monday.

Stefanow had been charged with a telephone threat to Wheeling patrolman Robert Heldreth. After a day-long series of events in magistrate court, a jury

found Stefanow innocent of harassment as charged by Heldreth.

Highlighting testimony was Stefanow, who revealed Naegele and Dixon had offered him information about the vice raid on an alleged house of prostitution at 2126½ Main St. last July 15.

Stefanow, however, did not say if the information discussed was official police business.

Police Chief Edward Weith Monday night said he would "study the testimony" given, to determine if any "official police business had been leaked out."

In the past, Weith has charged that outside influences had been causing a split in the ranks of the police department and that officers discussing "police business" had been creating problems within the ranks.

The chief said Stefanow's testimony Monday does not in itself indicate any

wrongdoing. "We would have to determine exactly what was discussed and see if official police business had been leaked out."

What took place prior to Monday's jury trial proved as interesting as what took place in the courtroom of Magistrate Jack B. Rothbart.

The 9:30 A.M. start of court was delayed at the request of Assistant Prosecutor A. Dana Kahle, who said he wouldn't proceed without an official court reporter.

Also, two subpoenas, one for Wheeling Detective Steve Habursky and the other for Ohio County Magistrate Rose Humway, both called to appear as defense witnesses, hadn't been served.

"We've a serious matter here," Rothbart said. "This is a serious problem because the sheriff's department hasn't adequately served the subpoenas."

Shortly after 10 a.m., Habursky appeared at the magistrate's offices.

(Continued on Page 3)

DATA SOURCE CLAIMED

(Continued From Page One)

Attempts to serve him the subpoena failed when he said "I wasn't served the paper before now and I'm not going to be waiting around."

He left the building and Dixon, who was off duty and had been called to appear on Stefanow's behalf, was soon in hot pursuit. A foot race took place along 14th Street between the two police officers.

Habursky managed to elude Dixon, but returned to the building sometime later and Dixon then served the paper on Habursky. That forced the detective to testify in the matter, which had evolved out of a vice raid on a center Wheeling establishment last July.

Meanwhile, an unserved subpoena remained for Magistrate Humway. Around noon she appeared and was served her subpoena by off-duty Police Sgt. Robert Mazur.

Humway explained, "The way Lt. Marvin Mellott (of the sheriff's department) tried to serve the papers didn't meet the requirements of the code. I didn't forget about the hearing today, I hadn't been served the summons to appear. Then when I walked in here, Mazur came up and said 'Here, Rose,' with the summons."

Rothbart earlier had said he was contemplating contempt of court charges "against someone," because the summons hadn't been served. After both witnesses appeared, Rothbart said "all's well that ends well" and that he didn't think contempt of court charges would be necessary.

Mrs. Humway, however, was upset. Despite the fuss, she wasn't called to

testify.

Habursky said he was upset because he wasn't sure who was going to pay his wages since he had been called to testify on behalf of the defendant in the matter.

A court reporter became available and the trial finally get [sic] under way [sic] at 11 a.m. with jury selection. The jury was seated at 11:20.

Testimony in the case started at 11:30 a.m.

THE INTELLIGENCER
City Edition
May 3, 1983

STEFANOW FOUND INNOCENT IN PHONE THREAT

By WARREN BAYS
The Intelligencer Staff

An Ohio County Magistrate Court jury Monday found Center Wheeling tavern owner George Stefanow innocent of a telephone threat against Wheeling Policeman Robert Heldreth.

The jury of four men and two women deliberated 23 minutes before telling Magistrate Jack B. Rothbart that testimony during the day-long session failed to convince them of harassment as Heldreth had claimed.

The case evolved from a raid on an alleged house of prostitution by Heldreth last July 15. Two days after the raid, Stefanow telephoned Heldreth, at that time a rookie policeman, because he had been told that Heldreth used Stefanow's name to

gain admittance to the house, known as the Green Door, at 2126½ Main St.

Heldreth had claimed that Stefanow used the phrase "I'll get you," or "I'll get even" for using his name. Stefanow claimed he merely called Heldreth "trying to find out who instructed him to use my name."

Heldreth and his wife, Carol, testified that Stefanow's call frightened the police officer, who "feared for my family" because of Stefanow's "reputation as being loud and an aggressive" person.

Heldreth explained that his "fears" came, in part, from newspaper articles detailing lawsuits which Stefanow had filed against members of the Wheeling police force. "Articles about Lt. (Joseph) Davis, Chief (Edward) Weith and (Detective Steve) Habursky and the problems they were having with Stefanow's lawsuits" created fears, he said.

Defense testimony presented by Stefanow indicated that he discussed the prostitution raid on the Green Door with at least two police officers, and he testified that both had offered information to him.

Under questioning by Ohio County Assistant Prosecutor A. Dana Kahle, Stefanow identified his informants on the police force as "my brother-in-law Don Naegele and Sgt. (Ronald) Dixon."

Stefanow had at first refused to identify his "sources" on the police force "because it might incriminate the officers," but after consulting with his attorney, William Metzner, he agreed to testify about information given him concerning the vice raid in Center Wheeling.

"I discussed it with Don Naegele and Sgt. Dixon," Stefanow said. In answer to a question from Kahle, Stefanow said he "sometimes asks" the two police officers

questions "and they give me information."

However, there was no testimony as to exactly what was discussed between Stefanow and the police officers. Stefanow said it was common knowledge that a "rookie" is used on vice raids and that he had "obtained information" about Heldreth before he had ever met the new policeman.

"Police officers told me he had only been on the force for two days," Stefanow told the court. He further said "I had been alerted" about Heldreth.

He identified Lucille Riggi, who has been cited by police for operating an alleged house of prostitution, as one person having given him information on the new officer and the vice raid.

Stefanow said Mrs. Riggi told him that the raid was successful because the rookie policeman gained entrance to the alleged house by using Stefanow's name.

Heldreth said he never used Stefanow's name; Habursky said he never told Heldreth to use Stefanow's name and Lt. Davis said he did not tell anyone to use Stefanow's name.

However, Habursky, who also had been called by Stefanow as a defense witness, testified "I told him (Heldreth) to do whatever he had to do" to get into the Green Door.

Dixon,too, was called as a defense witness and he said Heldreth had called the police station for Habursky and when told Habursky wasn't available he talked with Dixon.

Dixon testified, "He (Heldreth) said 'you know the troubles I'm having. Is he going to bring out things to cause me personal embarrassment?'

"I said if you did something wrong then George will bring it out in court," Dixon said.

Davis, also called by the defense, told the court he had "nothing whatsoever to do with the raid" on the Green Door and that he "never advised" Heldreth in any regard concerning Stefanow.

The last defense witness was Sandra Keller a WTRF-TV news reporter who refused to identify her source of information when asked if Lt. Davis had alerted her of the pending arrest of Stefanow on the telephone threatening charge.

Metzner said he was attempting to show "that the charge is a set-up from the start," and that Mrs. Keller and a television camerman were waiting at magistrate's court for Stefanow to film "a misdemeanor charge ... and TV coverage of a misdemeanor charge is unusual."

Mrs. Keller refused to identify her source of information and Rothbart agreed that she didn't have to. "I was there

as he (Stefanow) was being led to magistrate court," she testified.

During closing arguments to the jury, Kahl [sic] said the panel had heard a "lot of garbage in this game," but that it boiled down to Stefanow's claim he hadn't threatened Heldreth, or the police officer's charge that he had been harassed.